TA'LUKDA'RS AND TA'LUKDA'RI ESTATES.

PART I.—TA'LUKDA'RI SETTLEMENT OFFICER AND ESTABLISHMENT.

1. The Tálukdári Settlement Officer will correspond with Government through the Commissioner, N. D., but will communicate all letters of importance to the Collector of Ahmedabad. (G. L. No. 4449, dated 10th December 1862.)

2. The charges on account of supervision or management that will fall on the estates put under the management of the Tálukdári Settlement Officer should be levied according to a percentage on all receipts from estates under direct management. (G. Rs. Nos. 4164, dated 28th August 1871, and 8550, dated 2nd November 1895.)

3. It is the wish of Government that the Tálukdári Settlement Officer should have the benefit of the advice of the Legal Remembrancer in cases where the former is a party to a suit in his capacity as manager. But if he is accorded the advantages of a Government officer sued or suing in his official capacity he is also bound to attend carefully to the rules laid down for general guidance in such cases and to consider carefully whether resort need be had to litigation. (G. Rs. Nos. 3082, dated 18th June 1874, and 7778, dated 25th September 1885.)

4. Kárkúns in Government service who are employed as managers of Tálukdári estates in the Panch Maháls District under the designation of japtidárs are allowed to count their service as japtidárs for pension, provided that pensionary contributions have been paid by them since 8th February 1886 under the rules in Chapter XXXV, Part VII, of the Civil Service Regulations, Third Edition. (G. I., F. & C., No. 3775, dated 11th July 1888; *vide* G. R., F. D., No. 2553, dated 13th August 1888.)

5. The Tálukdári Settlement Officer and his establishment should be considered to be in foreign service of the third kind. Pension contributions are to be borne by the estates.

Six-elevenths of the pay of the Tálukdári Settlement Officer should be charged to Government, and the remainder to the estates. The establishment under him should be paid from general revenues instead of by estates under management, the cost being subsequently recovered from these estates.

(G. Rs. Nos. 5736, dated 7th August 1889, 8126, dated 24th October 1889, 2988, dated 1st May 1890, 611, dated 24th January 1891, 310, dated 24th January 1894, and 1993, dated 18th March 1898.)

6. The Tálukdári Settlement Officer should explain in the column of remarks or in a separate column showing interest accruing on advances, the apparent discrepancies in and between columns 6, 7 and 8 of Appendices 1, 2, 3 to his annual adminis-

tration report. (G. R. No. 1658, dated 10th March 1888.)

7. The collection of the contribution from Táluk-dárs towards the Boundary Marks Repair Fund as well as the collection of funds to meet a moiety of the cost of the inspecting establishment should be discontinued, and the entire cost of the inspecting establishment should be borne by Government. (G. R. No. 6921, dated 26th September 1888.)

PART II.—SURVEY AND SETTLEMENT.

1. The following orders were passed on the question of revision of revenue settlements of the estates of the Tálukdárs in the Ahmedabad District, not including those of the Mevásis of the Parántij District who, however, are to be regarded as Tálukdárs under the provisions of Act VI of 1888 :—

Jama.

"4. (1) The jama not to be enhanced more than 50 per cent. above that now levied, subject to the condition that the jama so enhanced shall not exceed 70 per cent. of the total assessment.

(2) When an increase of more than 25 per cent. is sanctioned, it shall be levied by periodic increments usually in the 1st, 3rd and 5th years of the settlement.

(3) Ordinarily the jama of a Tálukdár shall be made up as follows :—

(*a*) 60 per cent. of the assessment of the cultivated area and of lands kept as grass *birs*.

(*b*) 35 per cent. of the assessment of waste land, subject to the following :—

When the jama of the waste land exceeds the proportion of 15 per cent. of the entire jama, it shall be added to the jama of the cultivated area by three equal instalments payable in the 8th, 15th and 22nd years of settlement.

Any Tálukdár who may hand over his waste land or any portion of it, provided the area made over is more than 100 acres, to be managed according to the provisions of Section 28 of Act VI of 1888 for a term of not less than 20 years, shall be exempt from demand for jama on account of land so made over during the period of management. It must be understood that occupants of land of the same village or estate shall only be allowed to take up such land under management as they can cultivate in addition to their previous holding.

The Tálukdár making over waste land on the above terms will be entitled to any 'surplus receipts' as described in Section 29 (3), and will resume the land 'subject to leases and occupancy rights, if any, granted during management.'—Section 33 (*e*) of Act VI of 1888.

Local Fund.

"5. The Local Fund demand of a Tálukdár's holding shall be calculated upon the full survey assessment of all cultivated lands and grass *birs*, or upon 70 per cent. of the entire assessment of the holding, whichever may be the larger amount. Any reduction on the above rating will require special circumstances to justify it.

In the case of any estate which has not been subjected to survey such as that of the Thákor Sáheb of Limbdi, the Collector may offer a settlement of Local Fund at the kamál rate or on an estimate of the assessment of the entire estate, including alienations, in lieu of a survey assessment, and, if this is accepted by the Tálukdár within the time given him for acceptance, it may be recorded in the accounts as the Local Fund demand upon his estate for the term of settlement. If it is not accepted, the survey of the estates according to the provisions of Section 7 (clause 3) of Bombay Act III of 1869 should at once be made, and the cess fixed on the results of the survey assessment.

If a Tálukdár shall make over waste land for management on the terms above stated (paragraph 4), the Local Fund Cess, if calculated on 70 per cent. of the entire assessment of his estate, shall be reduced by the proportion of the assessment falling upon the waste land made over, but shall not be less

than the cess payable on the *full* assessment of the cultivated area, as above laid down.

The clause in the Tálukdár's jama agreement relating to Local Cess must be omitted in agreements issued under revised settlement. It was framed prior to the passing of Act III of 1869 and is inconsistent with the law as it now stands.

"*7. The foregoing rules will, it may be hoped, be a sufficient guide in determining the demand to be placed upon Tálukdári estates in revision survey. It may further be regarded as the desire of Government that a distinction should be made between the estates held under a rule of primogeniture, of which there are very few in Ahmedabad, and those in which partition obtains. The holders of the former are in a better position to contribute their full share to the public burdens than are many of the shareholders in the latter class, who are now reduced to the position of cultivators. A considerable degree of moderation in the Government demand may conduce to the transformation of the small shareholder class into a body of industrious yeomen; experience has shown that it is not justified by any corresponding public advantage in the case of the Tálukdárs who own large undivided estates.

"10. It may be convenient to note briefly, under each main head of survey operations, the conclusions which may be adopted for guidance, subject always to special conditions which must be dealt with by the Commissioner as they may arise.

Measurement.

"11. Revision should be generally confined to test of boundaries—

(1) of villages,

(2) of separate shares or estates,

(3) of alienations.

As regards (1), should any question be raised as to alteration of boundary by encroachment since the last survey, if the villages interested *belong to the same Tálukdár* the complaint may be made occasion for a more detailed test than the ordinary one, which should be very simple, at the expense of Government; but if the villages belong to *different owners* the complainant should be made to deposit the cost of the extra work entailed, and this should be finally credited to Government if the complaint is found to be vexatious: the amount of deviation from the boundary of the original field book which would establish the complaint as genuine should be determined by the Survey and Settlement Commissioner. Some risk of this kind will be needed to deter Tálukdárs from endeavouring to raise boundary disputes.

The same procedure should be followed in (2) test of internal boundaries of shares or separate estates, where complaint is made of encroachment.

As regards (3) alienations, some more detailed operations will be required in carrying out the provisions of Part II of the new Act.

For immediate revision purposes what is required is—

(*a*) test of the boundaries of alienations already recorded in the original survey or by any subsequent demarcation,

(*b*) demarcation of areas alienated under decree of the Civil Court, or by transfers duly registered.

Such cases will be known to the Tálukdári Settlement Officer from whom information can be obtained. The demarcation of these areas is needed in order to carry out the settle-

* Paragraphs 6 and 15—22 of this Resolution were cancelled by Government Resolution No. 4738, dated 13th July 1891.

ment of jama on lands which have passed out of the possession of the Tálukdár class at a higher percentage of demand, as already laid down.

Classification.

"12. A feature of the survey of 1864—1866 was that it took no cognizance of irrigation. The assessment at that time applied to lands watered from wells, &c., was not introduced in Tálukdári villages, and consequently no charge has been laid upon water advantages in the soil. There is but little irrigation for the raising of superior or garden crops in the Tálukdári area, and the assessment of water advantages was originally abandoned by Government for the reasons shown in paragraph 8 of the letter of the Revenue Commissioner, No. 2200A of 12th October 1863. It was proposed by the Commissioner that, in consideration of this exemption, the Tálukdárs should be required to guarantee to their tenants by lease the extra profits made by them through new well irrigation. The form however in which the exemption is recorded in the jama agreements is as follows (clause 7) :—'The Sarkár has not fixed during the currency of this lease any higher jama on account of bágáyat cultivation; you should therefore increase this cultivation by every means in your power.' It may be feared that the hopes which were entertained of a more intelligent and progressive management of their estates by the Tálukdárs on their emancipation from debt have not been largely realized, but the causes which led in the original survey settlement of these estates to a policy of moderation in the assessment of the jama must continue to rule the action of Government, and whilst Government refrain from pushing the State demand to a high percentage upon the dry-crop assessment, it would be hardly worth while at present to bring to account the item of water advantage merely to swell the untaxed margin left to the Tálukdár in the record. The existence of any large proportion of well irrigated lands should not however be excluded from consideration in assessing the jama; the percentage of dry-crop assessment to be taken may well be influenced by the fact that the estate embraces areas paying the higher and more constant rental of watered lands; in order, however, to secure due consideration of this factor all that is necessary is a note by the revising officer of the estimated capacity of existing sources of irrigation in cases where they are used to raise superior crops, sugarcane, garden produce, &c., which are few in numbers and mostly, Government believe, confined to the Ránpur Division of Dhandhuka and Gogha. Wells in the rice villages of Dholka and Sánand are also in some cases important aids requiring to be taken into account in the settlement of jama as a proof of the water advantages in the soil; as, however, the dry-crop rates are already high in the Tálukdári villages of these tálukás, this factor will in the present revision be of little moment.

An important item in classification revision which cannot be overlooked is the growth of 'khar;' this is not always permanent, but the benefit of the doubt cannot be safely taken by Survey officers without enquiry, and it may sometimes be found that by alteration of drainage conditions or other reasons the extent of infertility through 'khar' has materially increased.

In villages exposed to the action of water there will also probably be variations due to denudation, deposit of sand or gravel, &c., calling for recognition in revision. All these cases, where material enough to call for notice, will assuredly be made the subject of representations by the Tálukdár or rayats on the visit of the classer or Survey officer. It will be necessary to record variations in rice area, and new rice land should be treated as highest class dry-crop; rice land that has reverted to dry-crop must be dealt with on the merits—it may have permanently lost its water advantage through *natural* causes or through *neglect*. The Survey and Settlement Commissioner can deal with this class of revision claims, if they arise, on some simple principles.

Settlement.

"13. The entry of the names of holders in the registers of the revised survey must be made in consultation with the Tálukdári Settlement Officer who should furnish the Survey with all the necessary information to correct the existing record as a basis for revision of jama.

Of the particulars to be recorded under Section 5 of Act VI of 1888 the following should be at once registered :—

(*a*), (*b*), (*c—ii*), (*d—i*) on the existing data as regards sharers and their interests, and (*e*) with the sub-heads necessary to show the alienations recorded at the original survey and those since demarcated as described above (paragraph 11).

The further particulars to be registered under that section must await provision of establishment for their completion.

The Tálukdári Settlement Officer should be a 'Survey Officer' for the purposes of the new Act and for revision settlement. He should be gazetted as 'a Survey Settlement Officer in the Ahmedabad District' (under Sections 18 and 19, Land Revenue Code), so that his instructions as to the register may be of proper validity.

Of the two operations required for the revision, 1st, the assessment of the land, and 2nd, the fixing of the jama, the former will be conducted by the Survey and Settlement Department with the aid where needed of the Tálukdári Settlement Officer; the latter will be entrusted to the Tálukdári Settlement Officer acting as a Survey Settlement Officer and reporting through the Collector and the usual channels. The assessment of the land should not present any difficulties, as the tálukas to be dealt with have been, or are being, subjected to revision in respect of their rayatwári areas. The Survey and Settlement Commissioner will no doubt be able to turn this work to full account for revision of assessment in the Tálukdári portion.

Where, however, the existing maximum rates of the Tálukdári area are as high as, or higher than, those sanctioned on revision of rayatwári villages, a *primâ facie* claim arises for a favourable percentage in the settlement of jama. It will in such cases be necessary for the Survey and Settlement Department to examine the average incidence of the rates in Tálukdári as compared with those in rayatwári villages and to ascertain with reference to classification, grouping, &c., whether the apparent case for favourable jama percentage is made out and to furnish the Tálukdári Settlement Officer with the results of this examination.

There is no need to detail the other data which will be required by the Tálukdári Settlement Officer for the preparation of his scheme of jama settlement; they are either comprised in the register framed under his authority or have been already mentioned in the course of the remarks on revision operations above, such as the extent of cultivated and waste land, appreciable water advantages, &c., &c. Any further particulars not dealt with in the foregoing should be referred through the Survey and Settlement Commissioner for orders.

"14. In the Ahmedabad District there are, beside the Tálukdárs whose estates were settled between 1863 and 1866 on the Tálukdári tenure, the two other classes, 'Kasbátis' and 'Mevásis' who are mentioned in the Act VI of 1888. The Kasbátis are not proprietors of their holdings but lease-holders; their villages have been surveyed in the ordinary way and the principles upon which their leases are given are fully understood. Revision operation should be of the simplest character. The Mevásis of the Paránti Táluka do not practically differ from the ordinary Tálukdárs of the western tálukas in their status or tenure, and the same principles should be followed in their revenue settlement."

(G. R. No. 4580, dated 27th June 1899.)

2. Every Tálukdár's estate is held subject to the payment of jama to Government. Government have the right to fix the amount of the jama at their pleasure, and whatever may have been the methods from time to time adopted in arriving at the amount, the jama always has been, and must be regarded as a payment made on account of the estate as a whole. By the Tálukdárs' Act VI of 1888 this jama is defined to be the *land revenue* payable by a Tálukdár to Government, and the position of the Tálukdár in regard to his estate is defined (*vide* Section 33, Clause 2 (*m*)) as that of an occupant of an unalienated holding, though with one or two of the privileges as particularly specified of a holder of alienated land. Hence it follows that no part of Tálukdár's estate can be regarded for the purposes of Section 22 of the Tálukdárs' Act as "wholly or partially exempt from land revenue," and that in the absence of any special conditions or restrictions, every Tálukdár is liable to pay by way of jama on his estate the full assessment on all lands comprised in it, subject only to such deduction as Government may, with regard to the circumstances of each case, see fit to direct. Government cannot admit any right on the part of the Tálukdárs to claim an enquiry or to object to the amount fixed as jama on any ground arising out of the details of its calculation, so long as it does not exceed the total survey assessment. But while Government cannot permit their right to be disputed, it is obviously necessary to give equitable consideration to the position of the Tálukdár and fix his jama with reference to what he may reasonably be expected to pay. (G. R. No. 8455, dated 15th October 1894.)

3. The survey assessment must be held to indicate the productiveness of the estates if properly managed, and the proportion of 60 per cent. of the assessment of cultivated land should be maintained as the main part of the demand. A right to a share of the assessment of waste land should not be foregone, but when the application of the rules laid down in Government Resolution No. 4580, dated 27th June 1889, appears from the circumstances of the estate to result in a higher jama than can be afforded, the abatement should in the first place be so far as is necessary in the proportion of the assessment on waste land. If any reduction of the jama calculated in accordance with the orders of 1889 further than the total exclusion of demand on account of waste land is found necessary, it should be based on a consideration of the general condition of the estate and the resources of the Tálukdár. It cannot be acknowledged that Tálukdárs ever had the power of curtailing the Government dues by mortgaging, selling or otherwise alienating land. (G. R. No. 4656, dated 20th June 1895.)

4. The following concessions should be allowed in recovering from the Tálukdári estates in the Dholka Táluka of the Ahmedabad District the revised Local Fund contributions calculated in ac-

cordance with the instructions contained in paragraph 5 of Government Resolution No. 4580, dated 27th June 1889:—

(1) Where the increase is over 50 per cent. and less than 100 per cent., it should be taken in three equal biennial instalments.

(2) Where it is more than 100 per cent. and less than 200 per cent., it should be taken in five equal biennial instalments.

(3) Where it is more than 200 per cent. and less than 400 per cent., it should be taken in seven equal biennial instalments.

(4) Where it is more than 400 per cent., it should be taken in ten equal biennial instalments. (G. R. No. 2090, dated 20th March 1893.)

PART III.—TA'LUKDA'RS' JAMA.

1. A táluka or a portion of a táluka is not to be sold for arrears of jama, except as a last resource to collect the Government dues, and no such sale should be finally carried out except with the previous sanction of the Commissioner. There is also the danger of fraudulent sales through the Civil Courts. To guard against such frauds by the greatest possible publicity, all sales of Tálukdári estates or portions thereof shall be conducted by the Collector on the requisition of the Court under Section *248 of the Civil Procedure Code (1859), and the Collector will then consider whether the provisions of Section* 244 of the same Code may not be applied to stay the sale and satisfy the decrees by other means. (G. R. No. 3975, dated 21st September 1865.)

*Cf. Sections 286 and 326 of Act XIV of 1892.

2. No deductions on account of service lands held by Desáis or other hereditary officers in Mewási villages should be made in fixing the rentals of such villages. Act VII of 1863 should not be applied to alienated lands in Mewási villages, nor to similar lands in the Udhád Jamábandi villages in Kaira. (G. R. No. 4195, dated 3rd December 1867.)

3. Tálukdári lands are charged with land revenue due to Government, and may, therefore, be declared forfeited if the land revenue remains unpaid. (G. R. No. 116, dated 6th January 1881.)

4. As regards the nature of the Tálukdárs' jama, it is as much the full land revenue of those estates as the survey assessment is of ordinary occupied numbers. To obtain a gauge or standard for the purpose of fixing the Tálukdárs' jama, their estates were surveyed and assessed, but it was never intended to establish the full assessment as the Government demand and treat any difference between that and the sum actually fixed as jama in the light of an alienation. The Tálukdárs pay for their villages or estates in the lump, and their jama † is a sum of land revenue fixed from time to time at the pleasure of Government. It is less than the full assessment the lands would bear if they were held in detail as ordinary occupied numbers, because the Tálukdárs bear some of the charges of local administration. (G. R. No. 9354, dated 26th November 1884.)

5. Tálukdárs are clearly liable for the payment of the full jama due from them, whether they have alienated lands or not. Each case must be treated separately on its own merits in the matter of concessions regarding the amount of jama to be exacted. (G. R. No. 4738, dated 13th July 1891.)

6. In the determination of jamas regard should be had to the income of the estate, when it can be accurately ascertained, as well as to the survey assessment, and the Tálukdári Settlement Officer has

† In Section 2 (c) of Bombay Act VI of 1888 jama is defined to mean land revenue payable by a Tálukdár to Government.

the liberty for good and sufficient reasons to recommend a jama amounting to 50 per cent. of the income of the estate, notwithstanding that the jama so determined may amount to more than would have been leviable under the orders of 1889. (G. Rs. Nos. 8484, dated 28th October 1896, and 2262, dated 23rd March 1897.)

7. On the introduction of revised assessments in Tálukdári estates, nothing in the shape of a jama karár should be issued, but all recovery of Government dues should be made strictly in accordance with law.

The Tálukdárs should be leniently treated as regards calculation of jama on alienated lands.

In introducing a revised settlement such formalities may be followed as may save the dignity of Tálukdárs, but nothing should be done which may directly or indirectly raise friction as to the legal liability of payment of Government dues.

(G. R. No. 4387, dated 21st May 1892.)

8. In announcing jama settlements, no particulars should be given, but only the area and assessment as compared with the jama decided on. These orders do not override Section 213 of the Land Revenue Code under which survey records are open to the inspection of the public, and copies are to be given to persons applying for them on payment of prescribed fees. (G. Rs. Nos. 4656, dated 20th June 1895, and 6366, dated 21st August (1895).

9. Tálukdárs owning "Bhatha" lands will be allowed in any year to make an application to the Collector for revision of the "Bhatha" area, if they consider it has decreased to an appreciable extent. Such applications must be submitted before 31st December each year. If after due inquiry the Collector is of opinion that the jama should be revised in consequence of a falling off in the area of the "Bhatha" land, the sanction of Government should be obtained to the alteration in the amount. (G. R. No. 8836, dated 10th November 1892.)

PART IV.—MANAGEMENT OF TA'LUKDA'RS' ESTATES BY GOVERNMENT OFFICERS.

1. In the case of a Tálukdári estate placed under attachment under Section 144 of the Land Revenue Code, the Collector has power to utilize the balance in his hands in paying off valid charges on the land. Section 144 provides that the surplus profits shall be kept in deposit for the eventual benefit of the person or persons entitled to the same or *paid to the said person or persons from time to time.* The words italicized distinctly authorize payment of the balance to mortgage creditors who must be included, along with the owner, in the category of persons entitled to the surplus profits. The Collector incurs no risk in paying off mortgage debts, provided he exercises due care and caution, and only discharges such as are valid charges on the estate. (L. R. No. 1199, dated 9th September 1887; *vide* G. R. No. 6607, dated 30th idem).

2. The surplus receipts in the hands of the Tálukdári Settlement Officer, which under Section 29 (3) of the Gujarát Tálukdárs' Act, 1888, he is bound to pay over to the Tálukdár or Tálukdárs whose estate is under his management, constitutes a 'debt' which, under Section 268 (*a*) of the Civil Procedure Code, judgment-creditors of the Tálukdár or Tálukdárs could cause to be attached in execution of their decrees. (L. R. No. 1112, dated 3rd July 1891; *vide* G. R. No. 4797, dated 15th idem.)

3. Care should be taken to give to Tálukdári villages under the management of the Tálukdári Settlement Officer their fair share of the Local Fund collections derived from them in the form of works of local utility. (G. R. No. 8641, dated 14th November 1889).

4. The Tálukdári Settlement Officer, when asking sanction for advances from the Government Treasury in connection with the settlement of the debts of estates brought under his management, should report whether the advance proposed in each case can be met out of the budget allotment made during the year for advances to Tálukdári estates. (G. R. No. 7145, dated 8th October 1890.)

5. Management of an estate under Section 26 of the Gujarát Tálukdárs' Act, 1888, is directed simply in the interests of the inferior holders or for the peace of the country. Hence all surplus receipts have to be paid from time to time to the Tálukdár under Section 29 (3) of the Act, and he alone is responsible for payment of his own debts. The only liabilities which the Collector or his agent may legally defray are those named in Section 29 (3), *viz.*: (1) the costs of his own management of the estate, (2) current land revenue and all arrears thereof, and (3) cost of a revenue survey, if any be extended to the estate. The Collector or his agent should have no concern in any suit for any liabilities which do not relate to his management. If made a co-defendant in any

such suit, his reply should simply be that he has been unnecessarily made a party to the suit and has no interest in its subject-matter. Even if a portion of the estate should be attached or sold for the Tálukdár's debts, the Collector or his agent should not resist or object, but leave to the Tálukdár to defend his own interests, informing him perhaps, if it is thought desirable, that he had better do so. (L. R. No. 830, dated 12th May 1891 ; *vide* G. R. No. 3502, dated 26th idem.)

6. Section 28 of the Gujarát Talukdárs' Act, 1888, does not appear to contemplate the management by the Tálukdári Settlement Officer of part of an estate. The phrase 'portion of an estate' is frequently repeated throughout the Act, whenever its provisions are intended to apply to less than the whole of an estate. The omission of that phrase in Section 28 would seem, on the maxim *expressio unius est exclusio alterius*, to indicate the intention of the Legislature that charge should not be taken by a Government officer of anything less than 'the agegregate of a Tálukdár's interests in the lands which he holds.'

An undivided share is expressly excluded from such management by Section 28. An undivided share no doubt means one held in joint tenancy. But this express exclusion is because technically an undivided share is an estate, and the express reference to an undivided share does not therefore necessarily imply that any portion of an estate which is not held in undivided coparcenary can be taken in management.

The intention seems to be that a Tálukdár should either place all his estate, or none, in charge of the Tálukdári Settlement Officer or other officer appointed.

(L. R. No. 1078, dated 15th July 1892; *vide* G. R. No. 6190, dated 1st August 1892.)

7. The estate of a Tálukdár can be taken charge of and managed under Section 28 of the Gujarát Tálukdárs' Act, 1888, but the nature of the estate cannot be altered by the Tálukdár or the officer managing the same. A Tálukdár's estate in property, which is in the possession of a mortgagee, is limited to a bare equity of redemption, and Section 28 would not empower the Tálukdár to convert that into a legal estate with possession so as to deprive the mortgagee of his possession. But the Tálukdári Settlement Officer or other officer appointed for the purpose may no doubt represent the Tálukdár so far as his equity of redemption is concerned, and could therefore receive, examine and contest any accounts which the mortgagor may be entitled to receive of the mortgagor's usufruct. But no power is given to disturb any one in lawful possession without his consent, whether he be mortgagee or not. (L. R. No. 253, dated 6th March 1893 ; *vide* G. R. No. 2052, dated 18th idem).

PART V.—LEGAL OPINIONS.

1. To the questions whether the sanction of Government is necessary to sales of Tálukdárs' estates taking place subsequent to the coming into force of Bombay Act VI of 1888, in pursuance of contracts made prior to the Act, and whether such sanction is necessary to a sale intended to satisfy a debt contracted before the passing of the Act, Section 31 (2) appears to furnish a complete answer. Nothing, after the coming into force of the Act, can effect a transfer of ownership (Section 2 (1) (*d*),) unless the sanction of the Governor in Council has been obtained previously. All transactions which, prior to the coming into force of the Act, have already effected such a transfer, are of course unaffected by the requirements of the section. But no transaction falling short of such a transfer will validate an unsanctioned alienation after the Act comes into force.

Government would not sanction any alienations unless they were absolutely necessary for preserving an estate from complete ruin or for the protection of Government revenue; and the Tálukdári Settlement Officer should apply for the sanction of Government only in cases which, in his opinion, fall under this category. Such applications would, of course, be submitted through the Collector. In all other cases the plaintiff who asks for sanction should be referred to Government.

The sanction should precede the issue of the certificate of sale. In a sale of immoveable property the title vests in the purchaser under Section 316, Civil Procedure Code, "from the date of the certificate and not before."

I. L. R., 9 B., 10.
I. L. R., 10 B., 453.

An auction held before the sanction was obtained would give only an inchoate right, and the alienation could not be completed by issue of certificate until sanction had been obtained. A Court-sale will not be invalid merely by reason that the property had been put up to auction before the sanction could be obtained, and it is possible that before according sanction, Government might desire to know the amount of the bid.

The procedure, where sanction to the sale is refused, would be the same as in any other case in which a darkhást had been disallowed, as asking for the sale of property not liable to be sold. The darkhást would be rejected, and the decree would be treated as still unsatisfied, and if incapable of satisfaction out of other immoveable property of the judgment-debtor, would apparently be returnable to the Court from which it had been transferred.

No agreement would be necessary to bind the purchaser at a Court-sale to pay the Government jama. The obligation to do so would be not only a condition in the notification and certificate, but

an essential to the validity of the sanction itself. (L. R. No. 1549, dated 12th December 1889, and G. R. No. 42, dated 3rd January 1890.)*

* In connection with this Resolution and the two following Resolutions (Nos. 237, dated 10th January 1893, and 2132, dated 23rd March 1893), the subjoined reports of the Remembrancer of Legal Affairs are cited here for ready reference :—

(1) *Memorandum† from the Remembrancer of Legal Affairs, No. 1810, dated 15th December 1894.*

Vide G. R. No. 74, dated 5th January 1895.

The question raised in the accompaniments to Government memorandum No. 6678, dated 9th August 1894, is whether it will be possible to dispute the correctness of the law laid down by the High Court in the case noted in the margin.

Appeal No. 454 of 1893 from Appellate Decree.

Nagar Prágji ... Appellant (Original Applicant),

vs.

Jivábhái Bávája. Respondent (Original Opponent).

2. That ruling is to the effect that Section 31 (1) of the Gujarát Tálukdárs' Act, 1888, leaves to mortgagees whose liens were created before the passing of the Act, the full remedy which, at the time when those liens were created, the Courts would have given them, *i. e.*, the right, notwithstanding Section 31 (2) of that Act, to convert, without obtaining the sanction of Government, the incumbrance "as defined in Section 2 (1) (*e*) into an alienation."

3. In that case there was no appearance for the respondent (the Tálukdár), and arguments may, on opportunity offering hereafter, be adduced in support of the Tálukdári Settlement Officer's view.

4. It is unquestionable that ordinarily it is not to be presumed that retroactive effect was intended to be given to legislation affecting vested rights. But as shown in the case of Phillips *vs.* Eyre (L. R. 6 Q. B., 1), this rule is not of universal application. Exceptions have been recognized by the Bombay High Court on grounds which, it might be urged, were applicable in the present instance.

Williams *vs.* Smith, 28 L. J. Ex., 286.
Pryor *vs.* Pryor, 10 Ch. App., 469.
I. L. R., 15 Bom., 81.
3 B. H. C. R., 45, O. C. J.
5 M. I. A., 109.
Page *vs.* Bennett, 29 L. J. Ch., 393.
Maxwell on Interpretation of Statutes, 257-258.

5. Thus at I. L. R., 8 B., 340, Mr. Justice (now Sir R.) West said : "There is another principle enunciated by Savigny which, like the dictum of Willes, J., already referred to, has an important bearing on the case. It is this, that a law passed to promote some important public interest may be given on that account a retroactive operation if necessary, as the rule against such operation rests itself on such a general public interest, which may, under the circumstances, be deemed of less importance than the one embodied in the Statute. The purpose of the Dekkhan Agriculturists' Relief Act was undoubtedly to shield the property of agriculturists against their creditors, and this purpose we cannot but see was considered by the Legislature one of great public importance : thus only are the anomalous provisions of the Act to be accounted for. Such a purpose so manifested we cannot suppose to have extended only to the cases of attachments made after the Act had come into force." (Cf. I. L. R., 10 B., 367, and I. L. R., 14 B., 516).

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6. It might be urged that the provisions of Section 31, though they do not affect an *incumbrance* created prior to the Act, do operate to prevent any incumbrance (which is an interest *other* than that of an alienee or person to whom ownership is transferred) becoming after the Act an alienation or transfer of *ownership* (*vide* Section 2 (1) (*d*) and (*e*)) and that otherwise the protection aimed at would be inoperative for sixty years (Article 147, Schedule ii, Indian Limitation Act, 1877) and the intention of the Legislature would be defeated.

7. The validity of the pre-existing mortgage *as such* with the right to possession for satisfaction by apperception of profits is recognized in Section 31 (1).

In the case marginally noted, the High Court (the Chief Justice and Telang, J.) have decided that Section 31 (2) of Bombay VI of 1888 has no retrospective effect as against vested rights acquired under a decree passed before the Act on a mortgage-bond.

Judgment in Appeal No. 586 of 1891 from Appellate Decree.

Kalián Moti.
vs.
Pathubhái Faljibhái.

The cases in the margin are given as authority for this decision, and appear fully to support it. Other decisions to similar effect are I. L. R., 15 B. 81, 3 B. H. C. R., 45, O. C. J., 5 M. I. A., 109, and Page *vs.* Bennett, 29 L. J. Ch. 398. The case of Thompson *vs.* Waithman, 26 L. J. Ch., 134, might have been quoted as an authority on the other side, but its weight is impaired by the reversal of a case which followed it, *viz.*, Jackson *vs.* Woolley, 27 L. J., Q. B., 181 and 448.

Williams *vs.* Smith, 28 L. J. Ex., 286.
Pryor *vs.* Pryor, 10 Ch. App., 469.

It seems that the decision must be accepted as authoritative in cases where a decree for the sale of specific property had been obtained *before* the passing of the Act, as then the decree-holder is to be regarded as having a vested interest in which Section 31 (2) would not, in the absence of express words, retroact.

But Section 31 (2) clearly expresses the intention of the Legislature that no transfer of ownership shall without the sanction of the Governor in Council take place after the Act comes into force, and this, it may be urged, indicates the intention of the Legislature that the provisions of the section should operate retrospectively so far at least as concerns the form of remedy when no right thereto has already vested under a precedent decree. These are the only arguments that suggest themselves, and it may be worth while to submit them for consideration in some future case, though in view of the decision in the case referred to in the papers it is impossible to feel at all confident of a favourable result.

Maxwell on Interpretation of Statutes, 266 to 269.
I. L. R., 14 B., 516.

(2) *Letter* from the Remembrancer of Legal Affairs, No. 847, dated 26th July 1895:*

"With reference to Government Resolutions Nos. 74 and 2370, dated, respectively, 5th January and 23rd March 1895, I have the honour to report for the information of Government, that the appeal noted in the margin was heard by the High Court on the 8th instant, but the judgment was delivered on the 15th instant.

Regular Appeal No. 53 of 1894.

Fulchand Jesang
vs.
The Collector of Ahmedabad.

* *Vide* G. R. No. 6063, dated 9th August 1895.

"2. The Court held that the right acquired by the mortgagee prior to Bombay Act VI of 1888 was not affected by that Act, and that he was therefore entitled to a decree on his mortgage, but whether he could bring to sale the mortgage property without obtaining the sanction of Government, having regard to the provisions of Section 31, clause (2), was a question which the Court thought it was premature to consider at this stage. As, however, the case in I. L. R., 119 Bom., 80, was referred to by the appellant's counsel in the course of his arguments, the Court thought it right to remark that it doubted the correctness of that ruling, and that if the question again came up for decision, the Court might feel inclined to refer it to a Full Bench. The Court accordingly gave to the plaintiff a decree *nisi* with liberty (if the mortgage debt be not paid within six months) to apply for a decree absolute and sale.

The questions raised in the preamble to Government Resolution No. 42 of 3rd January 1890 appear to refer to cases in which the creditor had obtained a decree and order *after* the passing of the Act, and in such cases it may still be open to question whether the sanction of Government would not be necessary to give validity to the alienation of the Tálukdár's estate or any portion thereof or share or interest therein.

The case of Williams *vs.* Smith, 2 H. & N. 443, S. C., 28 L. J. Ex. 286, relied on in the judgment of the High Court decided that an Amendment Act would not operate on a writ of execution delivered *before* the passing of the Act, and it was observed "the *fieri facias* had begun to operate before the Statute passed and was in full vigour at that time. We cannot give the Statute a retrospective effect so as to deprive the debtor of any right he *possessed* under his writ."

The question of the retroactivity of legislation on execution proceedings was discussed at great length and with great differences of opinion in the case at I. L. R., 2 B., 148, and Sir Charles Sargent held that the amending legislation operated on all matters of procedure in execution subsequent to the Act coming into force. But Sir M. Westropp held the new Act to apply only to execution proceedings initiated after it came into force, and the majority of the Court adopted this view.

Apparently in case of execution sought against a Tálukdár's estate on a money decree passed prior to the passing of Bombay Act VI of 1888, in which no specific property was by the decree declared liable, it might be urged that no vested right in any specific property of the Tálukdár had been acquired, and that Section 31 (2) would, therefore, operate to bar a sale without sanction.

The word "alienation" as defined in Section 2 (*d*) of the Act means a transfer of ownership, and therefore except in cases where, prior to the Act, the right to obtain a transfer of ownership has been judicially declared, the Legislature may be presumed to have intended that no such right should be acquired without the sanction required by Section 31 (2).

The right which the holder of a mortgage-decree ordinarily puts up to sale is the right, title and interest of his judgment-debtor as it stood at the time of the mortgage (7 B. H. C. R., 146), but under an ordinary money decree, all that the decree-holder puts up to sale is the right, title and interest of the judgment-debtor at the date of the auction and no vested right in specific property having been obtained before the passing of the Act, Section 31 (2) would, it might in such cases be reasonably contended, affect the alienability of the judgment-debtor's estate.

(L. R. No. 1740, dated 14th December 1892; *vide* G. R. No. 237, dated 10th January 1893.)

2. If a mortgage decree was passed prior to the passing of the Gujarát Tálukdárs' Act, 1888, the mortgagee has a vested interest which that Act cannot by retroaction affect, and Section 31 (2) of that Act would not therefore render sanction indispensable to the validity of the sale. If the property mortgaged is an undivided share, the purchaser of the undivided share would have to obtain partition if he desired possession of a specific portion of the undivided property, but that fact would not prevent the vested interest of the mortgage decree-holder in obtaining the sale of the judgment-debtor's right, title and interest from remaining unaffected by the legislation which came into force subsequent to the acquisition of his rights. (L. R. No. 254, dated 6th March 1893; *vide* G. R. No. 2132, dated 23rd idem.)

3. The following opinion (No. 52, dated 12th January 1892) was recorded by the Remembrancer of Legal Affairs on the question whether the Tálukdári Settlement Officer may consider himself authorized, when his permission is applied for by a Tálukdár under Section 31 of Act VI of 1888 for borrowing money on the security of his estate, to have entered in the document executed at the time of the loan when such is the desire of the lender and borrower, a clause to the effect that on failure of payment of one of the fixed instalments of the debt or some other similar contingency, the management of the mortgaged lands shall be taken over by the Tálukdári Settlement Officer, the surplus profits being devoted by him to the liquidation of the debt incurred by their owner:—

"On the principle *expressio unius est exclusio alterius* the effect of Section 28 of the Gujarát Tálukdárs' Act (Bombay Act VI of 1888) is, I think, to restrict the power of the Tálukdári Settlement Officer to take over the management of a Tálukdár's estate at the Tálukdár's request to cases in which the conditions of that section are fulfilled. That is to say, it is not lawful for the Tálukdári Settlement Officer to take over the management of such an estate, by desire merely of the Tálukdár, unless the Tálukdár makes a written application in this behalf and Government sanctions his doing so. And I agree with the Tálukdári Settlement Officer that the sanction of Government should be specific for each case and may not be given generally.

"2. Taking this view of the law, the proposal of the Tálukdári Settlement Officer appears to me to be one which he cannot legally adopt. An agreement executed some months, perhaps some years ago, and executed possibly not by the present Tálukdar, but by his deceased predecessor in title, would not be a sufficient authority to the Tálukdári Settlement Officer to take over the management; he must be furnished with a written application from the Tálukdár, and that application must be a plain document such as the name 'application' implies and not an agreement, with a penalty attached to it, such as it would be if it were made to have effect only in the contingency of the Tálukdár failing to pay money to his sowkár.

"3. Assuming that a Tálukdár passed an agreement to his sowkár of the description which the Tálukdári Settlement Officer contemplates, it would not be legally competent to the latter officer, even if Section 28 of the Tálukdárs' Act did not exist, to take over the management of the Tálukdár's estate at once on the happening of the specified contingency, without

the consent of the Tálukdár. He could not even obtain possession by a suit against the Tálukdár on the strength of the bond, for as he *ex hypothesi* would not be a party to the bond he could make no claim under it. And an agreement made by the Tálukdár with the Tálukdári Settlement Officer would be *nudum pactum* for want of consideration. The bond between the Tálukdár and his sowkár could only bind the former, on the happening of a certain contingency, to apply to the Tálukdári Settlement Officer to take over the management of the estate; and if when the time came he or his successor in interest declined to do this, the most that could happen would be that a suit would lie on the part of the sowkár against him either for specific performance or for damages.

"4. With reference to paragraph 5 of the Tálukdári Settlement Officer's No. 1116 of 24th November 1891, I would suggest that the form of mortgage with possession called in the civil law 'antichresis,' and which is not unknown in some parts of this Presidency, is not open to the objections which the Tálukdári Settlement Officer mentions. It is a mortgage by which immoveable property is made over to the possession of the lender of money on the understanding that the profits which he may derive from it are to be enjoyed by him in lieu of interest on his money; so that the mortgage comes to an end whenever the borrower repays the principal merely. If it should be found possible to encourage this form of mortgage between Tálukdárs and their sowkárs, much subsequent bitterness of feeling and fraud and litigation might, I think, be avoided."

(G. R. No. 625, dated 27th January 1892.)

4. With reference to Section 2 (1) (*f*) of the Gujarát Tálukdárs' Act, 1888, the word "estate" must be held to have in that Act the same meaning which is ascribed to it in Section 3 (5) of the Bombay Land Revenue Code, 1879. Its meaning is, therefore, the aggregate of the interests in lands vested in any person.

But in the former Act the word is qualified by having prefixed to it either the word "Tálukdári" or the words "a Tálukdár's." A perusal of the Act proves, I think, that the terms "a Tálukdári estate" and "a Tálukdár's estate" are used in it interchangeably; the meaning of each of the two expressions is the same.

What constitutes "a Tálukdári estate" or "a Tálukdár's estate" must be gathered from the general purposes and provisions of the Act. It seems that it is intended to comprise only the aggregate of a Tálukdár's interests in lands which he holds, as such, *i.e.*, in lands which he holds on the Tálukdári tenure. The purposes of the Act, as set forth in its preamble, and the detailed provisions which it contains, all seem to me to point unmistakeably to the conclusion that the Legislature, in making this law, had only this class of interests in contemplation. This is especially clear with regard to alienations of a Tálukdár's estate or of any portion thereof, which by Sub-section (2) of Section 31 are declared to be invalid, unless made with the previous sanction of the Governor in Council; because the condition on which alone such sanction may be given, which is prescribed in the latter part of the Sub-section (2), can only apply to a jama-paying estate, *i.e.*, to one held on the Tálukdári tenure.

For these reasons, Sub-section (2) of Section 31 of the Tálukdárs' Act does not apply to immoveable property held by a Tálukdár on any tenure other than the Tálukdári tenure.

(L. R. No. 571, dated 20th April 1892; *vide* G. R. No. 4020, dated 9th May 1892.)

PART VI.—MISCELLANEOUS.

1. *Encumbered Tálukdári Estates.*—In the settlement of encumbered Tálukdári estates brought under Bombay Act VI of 1862, in cases where debts have accumulated and creditors are being compounded with, those who are able to support themselves should be required to do so, instead of being continued in the enjoyment of incomes to which, until the debts are paid off, they have no just claim. It seems so desirable to incite the Girassias to exert themselves to labour and develop their estates that His Excellency in Council would regret any arrangement which would be calculated to perpetuate their habits of idleness and indolence. The members of the Girassia families should be encouraged to take portions of the land of the estates with which they are connected, and cultivate them on their own account, at a reasonable rental to be paid to the representative of the estates to assist him in paying the Government jama. (G. R. No. 1445, dated 16th April 1864.)

2. *Kasbátis.*—In Kasbáti villages, in every case where the family of the original grantee may become extinct, the village should be declared Khálsa.

The right to succeed to the enjoyment of a Kasbáti lease is to be strictly limited to the issue, male or female, of the last lessee. It is not to extend to collateral heirs as well.

(G. Rs. Nos. 4523, dated 25th July 1877, 5276, dated 29th August 1877; 10616, dated 28th December 1896, and 9322, dated 28th December 1897.)

3. Government are satisfied of their right to resume all alienations made by Kasbátis during their tenure. (G. R. No. 2901, dated 4th June 1880.)

4. The following form for Kasbáti leases has been approved by Government:—

This Assurance is made the day of 18 between the Secretary of State for India in Council of the one part and (hereafter called the Lessee) of the other part.

The Secretary of State for India in Council doth hereby lease unto the Lessee the village of situate in the Registration Sub-District of and in the táluka of the Ahmedabad Collectorate. To hold the same from the day of 18 for the term of years at the yearly rental of rupees to be paid in such instalments on such dates and to such person as may be from time to time prescribed and designated by the Collector of Ahmedabad.

And the Lessee hereby covenants and agrees with the Secretary of State in Council:

1*st.*—That he will not sell, mortgage or in any other way whatsoever alienate, charge or encumber the said village or any portion thereof;

2*nd*.—That in the event of the said village or any portion thereof being at any time attached by or under the orders of a Civil Court, this Lease shall forthwith determine;

3*rd*.—That he will himself manage the said village, and not make it, or any portion of it, over to any other person to be managed in his behalf;

4*th*.—That he will make and maintain proper police arrangements, to the satisfaction of the District Magistrate of Ahmedabad, for the prevention and detection of robberies and thefts and the preservation of peace and order in the said village;

5*th*.—That he will regulate his demands upon the rayats of the said village in accordance with the system of Bhágbatái hitherto prevailing therein and will levy from them such rents and other dues as may be customary according to the village "dháro" and no more;

6*th*.—That he will pay the rental hereinbefore reserved at the times and in the manner hereinbefore provided for, and that if any instalment or any portion of any instalment of the same shall be in arrear it shall be recoverable from him under the provisions of the law for the time being in force for the recovery of arrears of land revenue;

7*th*.—That he will also pay Local Fund Cess and all other rates and taxes (if any) which shall at any time during the continuance of this Lease be payable in respect of the said village or any part thereof;

8*th*.—That on the expiration or sooner determination of this Lease he will yield up the said village without obstruction or objection, unless the Secretary of State in Council shall then be pleased to renew the said Lease for a further term:

Provided always, and it is hereby agreed that if and whenever there shall be a breach by the Lessee of any covenant, condition, or provision herein contained, and that if and whenever this Lease shall lawfully determine the Secretary of State in Council may re-enter upon the said village and resume the management thereof, and thereupon this Lease shall be null and void.

And it is hereby further agreed between the parties that in this Lease the words "Secretary of State in Council" shall include the Secretary of State in Council, his successors and assigns, and that the word "Lessee" shall include the Lessee and the heirs of his body male and female and their administrators, but shall not include any other heir of the said Lessee or any assign, and that in the event of the death of the Lessee and of the heirs, if any, of his body male and female during the continuance of this Lease the same shall forthwith determine.

In witness whereof the Tálukdári Settlement Officer has by order of the Governor of Bombay in Council attached his signature on behalf of the Secretary of State for India in Council to one part hereof remaining with the Lessee, and to the other part thereof remaining with Government the said has attached his signature the day and the year first hereinbefore written.

(Signed)

Signed by

in the presence of

(G. R. No. 5118, dated 7th October 1878.)

5. *Panch Mahâls Tálukdárs.*—In the Tálukdári estates in the Panch Mahâls the local fund cess should, as a general rule, be levied on the kamál; but each case should be separately considered, as where much of an estate is waste, the levy of the cess on the kamál will fall with great severity on a Thákor. (G. R. No. 6900, dated 17th November 1877.)

6. The Tálukdárs of the Panch Mahâls must be regarded as private landholders subject to the provisions of such laws as are in force relating to succession to landed estates, and all claims to succession should be heard by the ordinary civil tribunals. Government have not reserved any political power to decline to recognize adoptions or in any other respect to modify in regard to the Tálukdárs the law in force for private persons. (G. R. No. 6842, dated 15th September 1883.)

7. The antecedents of the Thákors of the Panch Mahâls are similar to those of the Tálukdárs of Ahmedabad; the leading principle of the dealings of Government with the former as with the latter should be non-interference with internal administration as long as it can be maintained, and the principles of law appropriate when intervention is necessary are contained in Bombay Act VII of 1863, Section 3, and Bombay Act V of 1879, Sections 159—160.

It may be practicable to raise some revenue from alienees in these estates, but this can be done only at the cost of a departure from the principle of non-interference in the internal management. The Government revenue from the Thákors' estates has been settled so as to increase considerably in the course of a twenty years' settlement, and this may be held to suffice.

But it is necessary to take some steps to arrest the process of alienation of lands on which Government have a claim for revenue without protection of the Government rights. The first measure for this object is the preparation of a complete classified register of existing alienations. The second measure is to make it distinctly known by notification to the Thákors and similar land-holders and to all

the persons to whom they in future grant or sell or mortgage land out of their estates, that Government will not recognize the alienation of any land in future free of liability to be assessed to land revenue.

Government will not recognize among existing alienations lands held by the Thákors themselves as gharkhed or kháng, or lands held by their families for maintenance or lands held for service. All such lands will be regarded at the renewal of the jama settlements as lands the assessment of which may be taken into account in fixing the jama. But present jama settlements need not be altered with reference to such lands exempted from the calculation on which they are based.

His Excellency in Council does not propose to attempt the levy of any judi on lands such as devasthán and inám holdings which are admitted as recognized alienations. It is desirable that all that is possible should be done to identify them, in order that if the estates are surveyed hereafter they may be demarcated. (G. R. No. 6155, dated 30th July 1885.)

8. *Relations between the Girassias and their tenants.*—It is only by holding out inducements, such as the letting out of their waste lands on easy terms and for a fixed period of years, that the Girassias can expect immigrants to flow into their villages, and that they can hope to become prosperous. The ignorance of the Girassias may prevent their seeing or understanding this for a time at least, but the efforts of the Settlement Officer should be directed to this point, with the view of placing the relations between the Girassias and their tenants on a satisfactory footing.

No measure would be productive of greater benefit to the Tálukdárs themselves than to follow the course which Government have, with such successful results, adopted with their own tenants-at-will under the survey settlement, by inducing the Tálukdárs to give their cultivators leases corresponding in length to the term for which their own settlements will run. Measures should, however, be taken to secure to the cultivators, wherever the *dháro* exceeds the survey rates, some share at least in the benefit of the remission which the settlement of the jama on the basis of those rates, instead of on a calculation according to the *dháro*, may yield.

(G. R. No. 1845, dated 11th May 1864.)

9. *Rights of Tálukdárs over minerals existing in lands in their possession.*—A Tálukdár possesses no rights to mines and minerals in the lands which he holds from Government on payment of jama. Government have no objection to the disposal by the Tálukdárs of minor products, such as stone and kankar, occurring in their lands. When such products are required for a public purpose they should not be removed from a tálukdári holding without either the consent of the Tálukdár or proper payment

if such be demanded by the Tálukdár. The right of a Tálukdár to cultivate the land in a river-bed included in his estate may be continued without question, according to the existing usage, and where the stream or river is the boundary of a tálukdári holding, the Tálukdár's rights over the part of the river-bed in his estate (*i. e.*, up to to the middle of the stream) may be regarded as being the same as his rights over the other lands of his estate. (G. R. No. 5096, dated 6th August 1898.)

10. *Wánta and Talpad.*—Though originally 'wánta' and 'talpad' denoted shares in the same village at the time of the Mussalmán conquest, when one-fourth of the village was allotted to the former holders of the village as wánta and the remaining three-fourths was kept by the conquerors as talpad, they are now so distinct that they cannot be treated as definite shares of one and the same village. Wánta in Gujarát, in Wilson's Glossary, is said to denote land either exempt from assessment or held at a quit-rent, chiefly by Rájputs; the tenure is prescriptive of remote antiquity without any deeds or grants.* (L. R. No. 439, dated 13th April 1882; *vide* G. R. No. 2855, dated 1st May 1882.)

* See High Court's judgment in Dolsang Bhavsang *vs.* The Collector of Kaira.